



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

said receipts, it was their duty to have inquired about it, and to have notified said Bates, and their failure to do so exonerates said Bates from all liability. Refused.

8. If the custom of pledging such warehouse receipts as collateral upon which to raise money was not known among warehousemen, and said Bates had not notice of any such custom, then he is not bound by it, and it did not prevent said Bates delivering said lard to said Grant, and the transfer of such receipts to the bank was not binding on said Bates. Refused.

11. If the bank claims the collaterals under the four notes dated in August and September 1877, about eight months after the receipts were issued, it was the duty of the bank to have first inquired to ascertain if Bates was in Cincinnati accessible to them. The lapse of time was such as to put the bank on inquiry about the lard before they could hold Bates responsible.

Refused, as written, given as follows: "If these loans were made at the date of the last notes; if they were original loans of that date, and Grant had then presented the bank with these collaterals, which had been given some eight months before that date, it was the duty of the bank to make inquiry in regard to them before taking them as security. If, however, they were renewals of original notes, and the receipts had been pledged as collaterals to the original notes, the renewals would carry the pledges with them to the last note of such renewals."

Verdict for plaintiff, \$8955.

United States District Court, District of New Jersey.

IN THE MATTER OF THE SCHOONER ELIZA B. EMORY AND DANIEL
R. WEEKS, MASTER.

C., a part owner and master of a vessel, sold all his interest therein, including what the parties denominated "the sailing right," to one W. Afterwards, C. purchased a new interest in the same vessel, and, joining other part owners, who, in the aggregate, constituted a majority, applied to the court, as the majority in interest, for the possession and control. *Held,*

(1) That the majority in interest of a ship were ordinarily entitled to the possession, and could appoint the master.

(2) That no such right was recognised in law as a *sailing right*, which one part

owner could sell and transfer to another part owner, against the will of the majority; and

(3) That notwithstanding this, one part owner could estop himself from obtaining the aid of a court of admiralty to restore him to the possession, after he had received a valuable consideration from another part owner for the right to sail the vessel.

THIS was a libel filed by John B. Clayton, Charles Lawrence, Nicholas Clayton and Enoch B. Champion, owners of 17-32ds of the schooner *Eliza B. Emory*, for the possession of the said vessel, alleging that when the libellants became the owners of their respective interests, one Daniel R. Weeks was the master in charge; but desiring a change, and representing a majority of shares in said schooner, they appointed John B. Clayton master, to navigate and sail her, and applied to the said Weeks to deliver up the possession of the papers and of the said vessel, which he refused to do.

The answer of Daniel R. Weeks, for himself and the remaining owners, did not deny that the libellants represented a majority of the shares in the ownership of the schooner, but claimed that he ought not to be deprived of her command and management, for the reason that in the month of April 1874, John B. Clayton, one of the libellants, sold to him 1-16th part of said vessel for the price of \$1750, agreeing to give, and assuring the said Weeks that he should have, the right to sail and manage her, if he would pay him (Clayton) the sum of \$1750 for said interest; that the value of the 16th did not exceed \$500, and the excess, to wit, \$1250, was demanded by Clayton and paid by Weeks for the privilege of sailing the vessel as master; that Weeks also agreed at the same time with the said Clayton to sail the schooner on what is known as "quarter shares," Clayton assuring him (Weeks) that the owners would not allow a larger interest for sailing; that Weeks sailed the vessel on "quarter shares," but in fact another one-quarter interest was also paid to another of the libellants, Nicholas Clayton, a brother of John B. Clayton, who thus received for the earnings of the vessel, during the time she has been sailed and managed by the said Weeks, a sum of about \$1800, without the knowledge of the other owners, who were informed by the said John B. Clayton that Weeks was sailing on "half shares."

S. H. Grey, for libellants.

H. R. Edmunds, for respondents.

NIXON, D. J.—The testimony shows that the libellant, John B.

Clayton, was the master of the schooner from the time she was built, in 1861, until he sold out his interest to the present master, Weeks; that he was the owner of 3-32ds, and transferred at the same time 2-32ds to Weeks and 1-32d to Nicholas Clayton; that Weeks was then, and had been for some years before, the mate on board the said vessel, and that Clayton was allowed more than the real value of the shares on the agreement and promise that he should succeed to the position of master.

The proctor for the libellants claims that the owners of a majority of shares have the legal right to control the sailing and navigation of the vessel, and that there is no such thing known in law as a sailing or master's interest, which is capable of being transferred from one person to another.

I think the correctness of these propositions must be admitted. Whatever the prevailing opinion or practice amongst owners may be to the contrary, it seems now to be generally understood that the minority must submit to the will of the majority in the management and control of the vessel; that it may employ or dismiss the master or crew at pleasure, and that no contract can be made between two part owners, having minority interests, in reference to the employment of the master, which will bind other owners not parties to it: *The New Draper*, 4 C. Rob. 235; *Ward v. Ruckman*, 36 N. Y. 26; *The W. Bagaley*, 5 Wall. 406.

But this is not quite the question which this case presents. If the libellants represented a majority of the shares of the vessel, without including John B. Clayton's interest, I should not hesitate for a moment to order a decree in their favor for the possession. But it is necessary to count him in order to constitute the majority, and the question here is, whether it is competent for one part owner to make an agreement or arrangement with another part owner, in regard to the management and control of the vessel, by which he may be afterwards estopped from claiming the management and control himself.

It would not seem to be a difficult question to answer, if we may apply to a case in admiralty the same principles that are applied to a suit in equity, and I do not see why we should not be allowed to do so. It is conceded that a court of admiralty is not a court of equity. It may nevertheless decide a cause submitted to its cognizance upon equitable principles. It has the capacity of a court of equity in the matter of granting relief and of restraining a wrong

when the rules of natural justice require a departure from strict legal relief. See Ben. Ad., § 329.

Looking at the pleadings and proofs, and disregarding all facts which are not set forth in the pleadings, I find that this is a cause of possession, and that it has been brought to dispossess a master, who is also part owner, without any allegations of incompetency, unskilfulness or dishonesty on his part, but solely upon the ground that the libellants represent a majority of the parties interested in the schooner, and as such have the right to her possession and control. I find that, aggregating their interests, all the libellants own 17-32ds of the vessel, and that of these shares, John B. Clayton, one of the libellants, is the owner of 10-32ds. I find that some years ago, the said Clayton, being a part owner and the master, made sale of his then interest to the respondent Weeks, whom the libellants are endeavoring to dispossess, and that he received from Weeks at the time a considerable sum of money for what the parties thought was the "sailing right" of Clayton.

Should an admiralty court be made the instrument of aiding him now to oust Weeks, and to resume possession and control, because he has been able to buy in enough of the outstanding shares of the vessel, to give him once more a majority? I should not like to be a party to any such unconscionable endeavor, and am glad that I do not find any principle of law that requires me to be one.

It is conceded that a sailing right is not transferable, and that no such right inhered to the shares, which Clayton sold to Weeks. It may also be conceded that if a majority in interest of the owners, irrespective of Clayton, claimed the possession, the court would accede to their request, although no cause for the master's removal were assigned. In saying this, I do not overlook the remark of Sir WILLIAM SCOTT in *The New Draper*, *supra*, that "in the case of the master and part owner, something more is required." (than the mere expression of the will of the majority in interest), "before the court will proceed to dispossess a person who is also a proprietor of the vessel, and whose possession, the common law, upon general principles, is inclined to maintain." Nor do I forget, that two of the ablest text-writers of this country (Story and Parsons), have given their assent to the law as thus stated. See Story on Part., § 445, and Parsons on Part. 562. But I think the later and better opinion is, that the owners of the shares of a vessel are tenants

in common, and not partners, and that the logical sequence of such tenancy is, that the majority in interest may displace the master at their will, without cause assigned: *Montgomery v. Wharton*; 1 Dall. 49.

But conceding these things, may not a part owner, by his act or conduct forfeit his right to complain of the possession of another part owner? May he not by the acceptance of a consideration, estop himself from the exercise of his undisputed right, under ordinary circumstances to take the possession and control of a vessel from the person who paid him the consideration for such possession and control? Although the doctrine of estoppel ordinarily rests upon the ground, that the law will not permit a party to profit by his own fraud, is there not a class of cases, where a person wholly innocent, in a moral point of view, may be bound by his acts and sayings, where, if he be not bound, he will be permitted to cast an injury upon some one, as innocent as he, but who has been misled by a confidence in what was said or done to him with the intent that he should rely upon it? *Parsons on Con.* 801.

It may be asked, as it was at the hearing, how can one be estopped by a contract which is void?

The court enforces no contract and does not seek to do so. It simply says to one of the part owners of a vessel, "You have placed yourself in such a position in the performance of an illegal act, that it is inequitable to allow you to repudiate your action and to do something contrary to it, to the injury of another. It is true that you had no 'sailing right' in the schooner which you could sell, but you made one of the subordinates, employed by you in navigating the vessel, believe that you had, and so induced him to pay you a liberal sum of money for the privilege of becoming master. You prefer no complaint that he does not faithfully perform his duties, but with his money still in your pocket you claim the active aid of the court, in dispossessing him and restoring you because you have voluntarily purchased, or otherwise obtained the control of enough shares, to enable you to represent the majority in interest of the ownership."

I must hold, that until the majority in interest of the owners, without including Clayton, join in the application, there should be no decree for the libellants, and that the present libel be dismissed with costs.